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**OFFICE OF PETITIONS**

|                              |   |                            |
|------------------------------|---|----------------------------|
| In re                        | : |                            |
| Tommy Leon Myatt             | : | DECISION ON APPLICATION    |
| Application No. 09/610,196   | : | FOR PATENT TERM ADJUSTMENT |
| Filed: July 5, 2000          | : |                            |
| Attorney Docket No. 5300-001 | : |                            |

This decision is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed August 17, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to nine hundred thirty (930) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **six hundred twenty-one (621) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 18, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On August 17, 2005, Applicant timely<sup>1</sup> submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is nine hundred thirty (930) days.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred two (102) days, pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2), reduced by nine hundred fifty (950) days of Applicant delay pursuant to 37 C.F.R. §1.704(b).

A Restriction Requirement was mailed on August 2, 2001, setting a one month extendable period for reply. No reply was filed, and as such, the application became abandoned by operation of law on September 3, 2001. A courtesy Notice of Abandonment was mailed on February 26, 2002. Applicants filed a petition to revive, together with a Response to Restriction Requirement, on March 6, 2002. The petition was granted in a decision mailed on June 9, 2004. 37 C.F.R. § 1.704(c)(3) states:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(3) Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

(i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or

(ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed;

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<sup>1</sup> Applicant filed the application for patent term adjustment prior to payment of the issue fee on August 18, 2005.

The application became abandoned on September 3, 2001. Four months after the date the grantable petition to revive was filed is July 6, 2002. Accordingly, applicant failed to engage in reasonable efforts to conclude examination of the application from the period beginning on September 3, 2001 and ending on July 6, 2002, or three hundred seven (307) days.

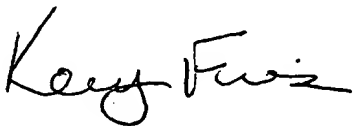
As set forth above, applicant filed the Response to Restriction Requirement with the petition to revive on March 6, 2002, not June 9, 2004. Therefore applicant should not have been assessed delay of nine hundred fifty (950) days. The Office did not mail a reply to the Response to Restriction Requirement until January 19, 2005. Accordingly, pursuant to 37 C.F.R. § 1.703(a)(2), PTO delay should have been assessed as nine hundred twenty-eight (928) days, not one hundred two (102) days as shown in PAIR, and not one thousand fifty (1050) days as asserted by applicant. Pursuant to 37 C.F.R. § 1.702(a)(2), the Office had four months from March 2, 2002 to file an Office action in response to the Response to Restriction Requirement.

In view thereof, the correct determination of patent term adjustment is **six hundred twenty-one (621) days** (928 days of PTO delay, reduced by 307 days of applicant delay).

Receipt of the \$200 fee under 37 C.F.R. §1.18(e) is acknowledged.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy